

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re)	Case No. 97-03746
)	Chapter 11
UPLAND PARTNERS,)	
)	
Debtor.)	
<hr style="width: 40%; margin-left: 0;"/>)	
)	Adv. Pro. No. 02-00043
RICHARD EMERY, Trustee,)	
)	
Plaintiff,)	
)	
vs.)	
)	
WILLIAM S. ELLIS, JR., et al.,)	
)	
Defendant.)	Re: Docket No. 212
<hr style="width: 40%; margin-left: 0;"/>)	

**MEMORANDUM DECISION REGARDING
“MOTION BY DEFENDANT ELLIS TO RECONSIDER AND VACATE
ORDER AUTHORIZING INTERVENORS TO WIND UP AFFAIRS OF
DISSOLVED KULA-OLINDA ASSOCIATES”**

This adversary proceeding is an excrescence from the chapter 11 bankruptcy case of Upland Partners. The Upland Partners case is one of the longest-running and most litigious cases ever to appear on this court’s docket. This is due in large part to the activities of William S. Ellis, Jr.

On December 15, 2003, Mr. Ellis filed a “Motion by Defendant Ellis

to Reconsider and Vacate Order Authorizing Intervenors to Wind Up Affairs of Dissolved Kula-Olinda Associates.” The motion repeats arguments that Mr. Ellis already made and the court previously rejected. The motion is denied.

Upland Partners owned a tract of real estate in upcountry Maui. Despite nearly forty years of effort, Upland Partners and its predecessors failed to make any appreciable progress in developing and selling the property. A creditor filed an involuntary bankruptcy petition against Upland Partners in 1997. Mr. Ellis joined in the petition. No one contested the petition, and an order for relief was entered in 1998.

Kula-Olinda Associates claimed a second mortgage on the land which was Upland Partners’ principal asset on the date of bankruptcy. Upland Partners, Kula-Olinda Associates, and Mr. Ellis are closely associated. Upland Partners is a limited partnership, and The Sword, Inc., is its general partner. Mr. Ellis is the president and sole stockholder of The Sword, Inc. Mr. Ellis also asserted creditor claims against Upland Partners, but the court has disallowed all of those claims (in one case because Mr. Ellis attempted to conceal the fact that he had rescinded the promissory notes on which the claim was based). Mr. Ellis is also the president of Olinda Land Corporation, the general partner of Kula-Olinda Associates. (Mr. Ellis stated that he is not personally a general or limited partner of Kula-Olinda

Associates and has not been a partner at any relevant time.)

The court appointed a trustee who eventually sold Upland Partners' property with court approval. The trustee paid certain expenses and senior claims and is holding the remaining sales proceeds pending a determination of the validity, extent, and priority of Kula-Olinda Associates' alleged lien. The Trustee commenced this adversary proceeding in order to obtain that determination (as well as other relief).

Kula-Olinda Associates answered the complaint, but thereafter its attorney withdrew. This posed a problem for Kula-Olinda Associates because an artificial entity can only appear in court through counsel, LBR 9010-1(a), and Kula-Olinda Associates lacked funds to retain another attorney. In response, Mr. Ellis purported to dissolve Kula-Olinda Associates and to cause Kula-Olinda Associates to assign all of its assets to him (docket nos. 23, 25). In order to protect their interests, three limited partners of Kula-Olinda Associates successfully moved to intervene in their own capacities and in a representative and derivative capacity on behalf of Kula-Olinda Associates (docket no. 50, 82). Mr. Ellis then purported to "rescind" the assignment of Kula-Olinda Associates' assets to him; the rescission instrument does not state, however, that the assets would be restored to Kula-Olinda Associates, but rather that they would pass to Olinda Land

Corporation (which, as noted above, is under Mr. Ellis’ control) (docket nos. 104-105). Mr. Ellis also moved to substitute Olinda Land Corporation for Kula-Olinda Associates, but he withdrew that motion (docket no. 150).

The intervening limited partners filed a motion for summary judgment (docket no. 145) “seek[ing] a court order enabling them to act in behalf of Kula-Olinda Associates . . . to the exclusion of” Mr. Ellis, Olinda Land Corporation, “and/or anyone acting by or through them.” The intervening limited partners argued that Olinda Land Corporation (under Mr. Ellis’ control) had wrongfully dissolved Kula-Olinda Associates and that therefore the intervening limited partners were entitled to wind up Kula-Olinda Associates pursuant to Haw. Rev. Stat. § 425D-803. The intervening limited partners also argued that, pursuant to Haw. Rev. Stat. § 425D-1001, they could prosecute and settle Kula-Olinda Associates’ claims in a derivative manner.

Mr. Ellis filed a “Position Statement by Ellis as President of Olinda Land Corporation” (docket no. 152). Mr. Ellis stated:

1. That [the intervening] limited partners of [Kula-Olinda Associates] have been substituted for [Kula-Olinda Associates] as Defendants to the Complaint in this adversary proceeding, to defend as fiduciaries for the benefit of the dissolved partnership and its creditors; and
2. That this Court lacks jurisdiction to wind up

the affairs of [Kula-Olinda Associates]

Following a hearing, at which the court orally stated its reasons on the record, the court granted the motion. The written order granting the motion (docket no. 195) provides that:

IT IS HEREBY ORDERED that the said Motion for Summary Judgment is granted in part so that the Cross-Claim Plaintiffs are authorized to act in their representative and derivative capacities in behalf of Kula-Olinda Associates, a dissolved Hawaii limited partnership and putative secured creditor of Upland Partners, debtor.

IT IS FURTHER ORDERED that said Cross-Claim Plaintiffs are authorized to wind up the affairs of said Kula-Olinda Associates. All other request[s] for relief set forth in said Motion for Summary Judgement [sic] are hereby denied.

Mr. Ellis' motion for reconsideration asks the court to vacate the statement that the intervening limited partners "are authorized to wind up the affairs of said Kula-Olinda Associates." Mr. Ellis argues that this court lacks subject matter jurisdiction to make this determination; that there are other limited partners of Kula-Olinda Associates who are indispensable parties; and that the Circuit Court of the Second Circuit, State of Hawaii, has exclusive jurisdiction to determine who has authority to wind up Kula-Olinda Associates.

Mr. Ellis made all of these arguments previously. A motion for

reconsideration should be based on new facts or new arguments that were not produced, and could not have been produced, at the initial hearing. Fed. R. Bankr. P. 9023, 9024. The motion fails to meet this standard. In any event, none of Mr. Ellis' arguments has any merit.

The court had subject matter jurisdiction to determine that the intervening limited partners have the authority to wind up the affairs of Kula-Olinda Associates. Bankruptcy judges have the power to “hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11.” 28 U.S.C. § 157(b)(1). “Core proceedings include . . . allowance or disallowance of claims against the estate” Id. § 157(b)(2)(B). The power to allow or disallow claims necessarily includes the power to determine who has the right to assert, prosecute, defend, and settle claims. Compare In re Cadiz Props., Inc., 278 B.R. 744 (Bankr. N.D. Tex. 2002) (bankruptcy court would adjudicate dispute over ownership of stock of corporate debtor in order to determine whether bankruptcy filing was authorized).

“Core proceedings” also include “matters concerning the administration of the estate.” 28 U.S.C. § 157(b)(2)(A). The ultimate goal of estate administration is distribution to rightful creditors. Identifying the holders of rightful claims, and the individuals who are entitled to control claims held by

artificial entities, is an essential part of the administration of the estate.

Finally, “core proceedings” also include “other proceedings affecting . . . the adjustment of the debtor-creditor . . . relationship.” Id. § 157(b)(2)(O).

Determining who is entitled to assert creditor claims against the debtor is an integral part of the adjustment of the debtor-creditor relationship.

In this case, certain limited partners of Kula-Olinda Associates contended that they, and not the general partner, were entitled to control the claims that Kula-Olinda Associates asserted against the bankruptcy estate. This request created a “core proceeding” that is within the bankruptcy court’s subject matter jurisdiction.

The bankruptcy court’s jurisdiction ends, however, when the needs of estate administration end. This court has jurisdiction to decide that the intervening limited partners are entitled to wind up Kula-Olinda Associates because that decision is necessary to determine the allowance and treatment of the Kula-Olinda Associates claims, to permit administration of the estate, and to adjust the debtor-creditor relationship between Kula-Olinda Associates and Upland Partners. The court has not assumed and will not assume jurisdiction, however, to supervise the winding up and liquidation of Kula-Olinda Associates or the distribution of its assets. After the trustee makes distribution to Kula-Olinda Associates, another

court will have to decide how the money will be allocated among the stakeholders of Kula-Olinda Associates.

Mr. Ellis lacks standing to contend that other limited partners were indispensable parties. He stated that he “personally [is] not a general or limited partner of KOA and [has] not been at any time relevant to this proceeding.”

(Docket no. 162.) He has no personal stake in the question of whether other parties should be involved in this matter. He is also estopped from making this contention because he has refused to identify the three limited partners whom he says are indispensable parties.

Mr. Ellis’ argument based on Haw. Rev. Stat. § 425D-803 distorts the plain language of that section. Section 425D-803 provides that:

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership, or, if none, the limited partners, may wind up the limited partnership’s affairs; but the circuit court of the circuit in which the principal place of business of the limited partnership is located may wind up the limited partnership’s affairs upon application of any partner or any partner’s legal representative or assignee.

This statute draws a distinction between winding up by the partners and winding up by a court. This court determined that the limited partners were entitled to wind up Kula-Olinda Associates because the general partner had

wrongfully dissolved it. This ruling is based upon the first half of the statute (before the semicolon). The first half of the statute does not specify which court has jurisdiction. The court did not purport to wind up Kula-Olinda Associates pursuant to the second half of the statute (after the semicolon). Therefore, even if the second half of the statute were construed to deprive the federal courts of the power to enforce it (which would be a strange and troublesome interpretation), the statute does not limit the power of any court to determine whether a partner is entitled to wind up a partnership under the first half.

Mr. Ellis' motion has no merit. Mr. Ellis' motion has only served to impose even more expense and delay upon the other parties to this case. A separate order denying the motion will be entered.

DATED: Honolulu, Hawaii, January 14, 2004.

 */s/ Robert J. Faris*
United States Bankruptcy Judge